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## **OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT**

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# **San Diego Clean Generation Program: Proposed Resolutions of Intention to Form Special Tax District and Incur Bonded Indebtedness**

## **OVERVIEW**

On February 16, 2010, the City Council adopted Ordinance O-19930 to amend the City's Municipal Code to facilitate the contemplated Clean Generation financing program (Program). This was the first step in an effort to provide property owners in the City with an innovative option to finance renewable energy, energy efficiency retrofits and/or water conservation fixtures (Conservation Improvements).

The City Council is now being asked to adopt two resolutions expressing their intention to 1) establish City of San Diego Renewable Energy, Energy Efficiency, and Water Conservation Improvement District No. 1 (District) and 2) incur bonded indebtedness on behalf of the District not to exceed \$200 million. The resolutions further establish that a public hearing will be held on April 27, 2010 to allow public comment on the proposed actions related to the District.

The IBA issued Report #10-10 on January 29, 2010 to provide an overview of the proposed Clean Generation financing program, associated benefits and limitations, and to discuss the proposed ordinance amending the Municipal Code to facilitate District formation.

This report briefly discusses the two resolutions before the City Council and suggests questions to be addressed by City staff and the outside Program Administrator (contract has yet to be approved) when they return to the City Council for additional action to facilitate District formation on April 27, 2010.

# FISCAL/POLICY DISCUSSION

## Overview of the Proposed Clean Generation Financing Program

As described in Ordinance No. O-19930, the Program provides for an alternate method of financing Conservation Improvements by creating a citywide special tax district comprised of properties that may be improved through the issuance of bonds secured by special taxes levied on the improved properties. Property owners in the City would be allowed to “opt into” the District to access special tax financing for Conservation Improvements. Specifically, the Ordinance authorizes financing for “the acquisition, construction, expansion, installation and improvement of energy efficiency, water conservation, including pollution control, and renewable energy improvements and equipment with an expected useful life of five years or longer to or on real property and in buildings, whether such real property or buildings are privately or publicly owned.”

Property owners interested in installing Conservation Improvements could apply for District financing that will be legally tied to their property. This financing feature is notable in that the responsibility to repay the debt stays with the property rather than with the initial property owner who opted to use District financing to fund Conservation Improvements. Property owners who subsequently purchase a property with financed conservation improvements would enjoy the beneficial value/use of the improvements and only be responsible for repaying the remaining term of the debt.

Following the issuance of a RFP last June, City staff is in the process of recommending an experienced program team to administer the lending program and provide the related financing. Staff originally anticipated bringing this agreement to the City Council along with the resolutions of intention; however, staff now plans to bring the agreements forward on April 27, 2010 which will coincide with the planned public hearing for the District.

Staff has indicated the interest rate for a twenty year loan will be determined by the rate on a 20-year Treasury Bond plus 245 basis points (2.45%), or approximately 7% based on recent interest rates. With the exception of certain start-up costs (i.e., promotional brochures), all costs related to program administration, financing and City staff time will be covered by the aforementioned interest rate on Conservation Improvement borrowing.

## Resolution of Intention to Establish the District

This resolution declares the City Council’s intention to conduct proceedings to establish the District in accordance with procedures described in the Municipal Code. The boundaries of the District are proposed to be coterminous with the boundaries of the City. Facilities eligible for District financing are described in Exhibit A to the resolution. Details related to the special tax are described in Exhibit B – Rate and Method of Apportionment for the District. As property owners for a particular property must unanimously evidence their desire to “opt-into” the District in writing, a draft Form of Unanimous Approval has been included as Exhibit C to the resolution.

Section 5 of the resolution states that “The City Council hereby finds that the Rate and Method of Apportionment provides sufficient detail to allow each landowner or resident choosing to

annex to the Special Tax District to estimate the maximum amount that he or she will have to pay.” This section goes on to provide that the maximum special tax shall not be increased over time and cannot be levied beyond FY 2061. The latter provision reflects that the District is established for a period of 50 years.

Section 7 of the resolution indicates that interest rates on District financing shall be “at a rate not to exceed the lesser of 12% per annum or the maximum rate of interest as may be authorized by applicable law at the time of sale of such bonds.” This section further limits the term of the bonds to no more than 30 years. The staff report provides that bond terms will be designed to reflect the useful life of the financed improvement up to 20 years; however, when asked about the 30 year limit in the resolution, staff indicated that this allowed for the possibility that eligible Conservation Improvements could be developed with useful lives up to 30 years.

#### Resolution of Intention to Incur Bonded Indebtedness

This resolution declares the City Council’s intention to incur bonded indebtedness up to \$200 million to finance the costs of eligible Conservation Improvements and incidental expenses. The responsibility to repay the debt will be entirely borne by the benefitting property owner and secured by a special tax lien placed on the improved property. The City Council has yet to receive detailed information on the specific form and operational logistics of the financing.

Both of the aforementioned resolutions state that a public hearing will be held on April 27, 2010 at 2:00 p.m. to determine “whether the public interest, convenience and necessity” require the proposed formation of the District and the related issuance of bonds.

#### Suggested Questions to be Addressed by City staff and the Program Administrator in April 2010

In discussing the District contemplated Program with staff, the IBA believes the City Council has yet to receive a detailed presentation on the contemplated financing mechanism, related process/documentation for interested property owners, and benefits associated with contracting for outside Program administration. Staff indicates they have been in discussion with a competitively selected organization regarding these Program attributes, but details are still being finalized and the contract has yet to be presented to the City Council for consideration. As the current plan calls for the Program Administrator contract to come forward on April 27, 2010, the IBA would suggest that the following questions be addressed to the extent that information is available:

- Will Conservation Improvement financing be provided via traditional special district bonds, “micro-bonds”, bank loans, or something else? Will the City Council be required to approve the form of the bond/lending documents? If so, when?
- Will the financing/loans be packaged for sale to the public or to one or more sophisticated investors via a private placement? Will there be any associated City disclosure requirements?

- How will the Program Administrator assist property owners in understanding the Program, evaluating their eligibility, explaining the application process, identifying related energy incentive programs, etc.?
- Will District financing be capped at a certain dollar threshold per property or property owner? Does the City (or other governmental entities) currently have plans to utilize the Program for Conservation Improvements to public property?
- Once a special tax lien is placed on a property to secure Conservation Improvement financing, how will subsequent purchasers of the property be made aware of outstanding special tax liens?
- How will Program requirements endeavor to support the local economy or the environment?

## CONCLUSION

The IBA has reviewed the two proposed resolutions of intention to form the District and incur up to \$200 million of bonded indebtedness to finance costs of eligible Conservation Improvements. The resolutions establish a public hearing date/time (April 27, 2010 at 2:00 p.m.) for the public to comment on the proposed formation of the District and the related issuance of bonds. Considering potential public and private benefits associated with the contemplated Program, the IBA recommends the City Council approve the two resolutions of intention.

District formation and Program initiation (targeted for June 2010) will require additional City Council actions in April and May 2010. Understanding that final details relating to several important elements of the Program are still under development, the IBA further recommends that the City Council be provided with additional Program detail when the Program Administrator contract is docketed for approval, currently anticipated for April 27, 2010. This report suggests questions to be addressed as soon as information is available.

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